



March 30, 2001

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## ENGROSSED SENATE BILL No. 261

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DIGEST OF SB 261 (Updated March 29, 2001 11:01 AM - DI 94)

**Citations Affected:** IC 24-4.5; noncode.

**Synopsis:** Determination of total finance charge. States that a lender may include any amount prepaid within 60 days of the date of the prepayment in full in the calculation of a contracted penalty for the full prepayment of the loan. Specifies certain fees that are not included in the total finance charge.

**Effective:** July 1, 2001.

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### Nugent, Paul

(HOUSE SPONSORS — SAUNDERS, DOBIS, WHETSTONE, BODIKER)

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January 10, 2001, read first time and referred to Committee on Insurance and Financial Institutions.

February 26, 2001, amended, reported favorably — Do Pass.

March 5, 2001, read second time, ordered engrossed. Engrossed.

March 6, 2001, read third time, passed. Yeas 47, nays 3.

#### HOUSE ACTION

March 12, 2001, read first time and referred to Committee on Financial Institutions.

March 29, 2001, amended, reported — Do Pass.

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ES 261—LS 7431/DI 94+



March 30, 2001

First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

## ENGROSSED SENATE BILL No. 261

A BILL FOR AN ACT to amend the Indiana Code concerning financial institutions.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 24-4.5-3-209, AS AMENDED BY P.L.23-2000,  
2 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2001]: Sec. 209. Right to Prepay - (1) Subject to the  
4 provisions on rebate upon prepayment (IC 24-4.5-3-210), the debtor  
5 may prepay in full the unpaid balance of a consumer loan, refinancing,  
6 or consolidation at any time without penalty. With respect to a  
7 consumer loan that is primarily secured by an interest in land, a lender  
8 may contract for a penalty for prepayment of the loan in full, not to  
9 exceed two percent (2%) of ~~the net unpaid balance~~ **any amount**  
10 **prepaid within sixty (60) days of the date of the prepayment in full**,  
11 after deducting all refunds and rebates as of the date of the prepayment.  
12 However, the penalty may not be imposed:  
13 (a) if the loan is refinanced or consolidated with the same  
14 creditor;  
15 (b) for prepayment by proceeds of any insurance or acceleration  
16 after default; or  
17 (c) after three (3) years from the contract date.

ES 261—LS 7431/DI 94+



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(2) At the time of prepayment of a consumer loan not subject to the provisions of rebate upon prepayment (IC 24-4.5-3-210), the total finance charge, including the prepaid finance charge but excluding the loan origination fee allowed under IC 24-4.5-3-201, may not exceed the maximum charge allowed under this chapter for the period the loan was in effect. **For the purposes of determining compliance with this subsection, the total finance charge does not include the following:**

**(a) The loan origination fee allowed under IC 24-4.5-3-201.**

**(b) The borrower paid mortgage broker fee, if any, paid to a person who does not control, is not controlled by, or is not under common control with, the creditor holding the loan at the time a consumer loan is prepaid.**

(3) The creditor or mortgage servicer shall provide an accurate payoff of the consumer loan to the debtor within ten (10) calendar days after the creditor or mortgage servicer receives the debtor's written request for the accurate consumer loan payoff amount. A creditor or mortgage servicer who fails to provide the accurate consumer loan payoff amount is liable for:

~~(A)~~ **(a)** one hundred dollars (\$100) if an accurate consumer loan payoff amount is not provided by the creditor or mortgage servicer within ten (10) calendar days after the creditor or mortgage servicer receives the debtor's first written request; and

~~(B)~~ **(b)** the greater of:

(i) one hundred dollars (\$100); or

(ii) the loan finance charge that accrues on the loan from the date the creditor or mortgage servicer receives the first written request until the date on which the accurate consumer loan payoff amount is provided;

if an accurate consumer loan payoff amount is not provided by the creditor or mortgage servicer within ten (10) calendar days after the creditor or mortgage servicer receives the debtor's second written request, and the creditor or mortgage servicer failed to comply with ~~clause (A)~~ **subdivision (a)**.

A liability under this subsection is an excess charge under IC 24-4.5-5-202.

**SECTION 2. [EFFECTIVE JULY 1, 2001] IC 24-4.5-3-209(1), as amended by this act, applies to a contract between a lender and a debtor that is entered into or renewed after June 30, 2001.**

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SENATE MOTION

Mr. President: I move that Senator Paul be added as coauthor of Senate Bill 261.

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## COMMITTEE REPORT

Mr. President: The Senate Committee on Insurance and Financial Institutions, to which was referred Senate Bill No. 261, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 9, strike "the net unpaid balance" and insert "**any amount prepaid within sixty (60) days of the date of the prepayment in full,**".

Page 2, line 2, delete "any".

Page 2, line 3, delete "prepaid finance charge paid to a third party and".

Page 2, line 5, after "effect." insert "**For the purposes of determining compliance with this subsection, the total finance charge does not include the following:**

(a) **The loan origination fee allowed under IC 24-4.5-3-201.**

(b) **The borrower paid mortgage broker fee, if any, paid to a person who does not control, is not controlled by, or is not under common control with, the creditor holding the loan at the time a consumer loan is prepaid."**

Page 2, line 16, strike "(B)".

Page 2, after line 28, begin a new paragraph and insert:

**"SECTION 2. [EFFECTIVE JULY 1, 2001] IC 24-4.5-3-209, as amended by this act, applies to a contract between a lender and a debtor that is entered into or renewed after June 30, 2001."**

and when so amended that said bill do pass.

(Reference is to SB 261 as introduced.)

PAUL, Chairperson

Committee Vote: Yeas 9, Nays 0.

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred Senate Bill 261, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, line 36, delete "IC 24-4.5-3-209" and insert "**IC 24-4.5-3-209(1)**".

and when so amended that said bill do pass.

(Reference is to SB 261 as printed February 27, 2001.)

BODIKER, Chair

Committee Vote: yeas 13, nays 1.

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